

IN THE HIGH COURT OF BOMBAY AT GOA

**FIRST APPEAL NO. 19 OF 2002
WITH
CROSS OBJECTION**

1. State of Goa,
through its Deputy Collector(Dev.)
Margao, Goa.
 2. The Sports Authority of Goa,
Campal, Panaji, Goa.
- ... Appellants

versus

1. Arthur Luis do Rosario Moreiro,
 2. Raul Luis do Rosario Moreiro,
 3. Fernandes Maria Jose Moreiro,
 4. Antonio Luis do Rosario Moreiro,
 5. Maria Ivone Angelica Moreiro,
 6. Maria Manuel Moreiro,
 7. Abel Luis de Rosario Moreiro,
 8. Rui Alexandre Luis Moreiro,
 9. Carlos Alberto Luis Moreiro,
 10. Ilidio Caetano Jose Moreiro,
- all residing at Panaji, through
their Power of Attorney Egipsy
Noronha, Luis de Menezes Road,
Panaji, Goa.
- ... Respondents

Mr. P. A. Kamat, Government Advocate for the Appellants.

Mr. M. B. Da Costa, Senior Advocate with Mr. J. A. Lobo,
Advocate for the Respondents.

**CORAM: B. H. MARLAPALLE &
N. A. BRITTO, JJ.**

DATE : 19TH OCTOBER, 2004.

ORAL JUDGMENT(PER B.H.MARLAPALLE, J.)

This appeal filed under Section 54 of the Land Acquisition Act, 1894(the Act, for short) arises from an Award dated 12th July, 2001, passed by the learned Additional District Judge, South Goa, Margao, in Land Acquisition Case No. 160/1989. The State Government issued Notification under Section 4 of the Act and it was published in the Government Gazette on 20th April, 1988 for the acquisition of a total area of 13,863 sq. meters for the purpose of building a Sports Complex/Stadium. The Land Acquisition Officer passed his Award on 1st June, 1988 and fixed the market value at Rs.40/- per sq. meter. Being dissatisfied with the said rate of compensation the present Respondents/land owners moved an application under Section 18 of the Act for enhancement and claimed that the market value of the subject land was Rs.400/- per sq. meter. The claimants had examined 3 witnesses i.e. A.W.1, Mr. Egipsy Noronha Rodrigues, as the Power of Attorney of Mr. Rui Alexandre

Luis Moreiro and his wife Mrs. Maria Moreiro and other joint owners, A.W.2, Mr. Jose Almeida – an Engineer and A.W.3, Mr. Jose Raul Coutinho who had purchased a plot admeasuring 628 sq. meters for an amount of Rs.2,51,200/- vide Sale Deed dated 27th July, 1988 (Exh.AW3/A), for construction of a residential building and he is admittedly a builder. The State Government did not examine any witnesses. After considering the sale instances in respect of a plot admeasuring 500 sq. meters vide Sale Deed exhibited on 16th June, 1986 in respect of a plot located near the subject land and another sale instance of a plot admeasuring 608 sq. meters vide Sale Deed dated 7th July, 1988, the Reference Court thought it appropriate to rely upon the second sale instance dated 7th July, 1988 rather than the earlier Sale Deed dated 16th June, 1986. In the second sale instance, the market price came to be Rs.400/- per sq. meter and by allowing the deduction of 33.3% the market price came to be fixed at Rs.267/- per sq. meter for the subject land. In addition, other statutory benefits of solatium and interest were also granted by the impugned Award.

2. Mr. P. A. Kamat, the learned Government Advocate submitted that similarly placed claimants had also sought higher compensation and in First Appeal No.18 of 2002, the Reference Court had fixed the market value at Rs.267/- per sq. meter. The parties settled the market price dispute in the Lok Adalat and the claimants accepted the market value at Rs.115/- per sq. meter and this should

be taken as the appropriate market value for the subject land as well. He also referred to the sale instances as referred to hereinabove and submitted that they were not comparable for more than one reasons. Firstly, they were all developed plots and in the case of the sale instance dated 7th July, 1988, it was the builder who was the purchaser. Even the purported agreement for sale was signed between the parties after the Notification under Section 4 of the Act was published on 20th April, 1988, and once the public had come to know about the acquisition for Stadium, the prices naturally escalated. In view of this, the said sale instances could not be accepted as comparable. The earlier sale instance dated 16th June, 1986 has been discarded by the Reference Court for the simple reason that it was a small plot of land i.e. 500 sq. meters. We are not impressed by the reasoning set out by the Reference Court in accepting the sale instance of a plot admeasuring 628 sq. meters and discarding the sale instance of a plot admeasuring 500 sq. meters.

3. We have also noticed that the first witness i.e. A.W.1, Egipsio Noronha Rodrigues, had placed on record a copy of the Award dated 23rd November, 1981(Exh.A-3) in respect of the land admeasuring 5920 sq. meters acquired by the State Government vide the Notification under Section 4 of the Act published on 5th July, 1981. This land was acquired for construction of Police Staff Quarters at Fatorda, Margao and is located at a distance of about one kilometer from the subject land. The Land Acquisition Officer had determined

the market value at Rs.90/- per sq. meter though, the land was not located in the municipal area of Margao and it was not a levelled land. The Award passed by the Deputy Collector, South Sub-Division, Margao, and placed at Exh.A-3 is self explanatory and in fact this could have been the only comparable instance for fixing the market value of the subject land rather than considering any of the sale instances placed on record by the claimants. The land acquired for the Police Staff Quarters in 1981 was beyond the municipal area and though in the proximity of the upcoming industrial estate, there could be no dispute that at the relevant time, the market value of the land located within the municipal area of Margao could have at least been 50% more and if we take this increase the market value in the municipal area in July, 1981 could be safely fixed at Rs.135/- per sq. meter(50% more than the market value for the land acquired for the Police Staff Quarters). It would be also safe to consider a hike of at least 10% every year for the land located within the municipal limits and there is a gap of 7 years between the two acquisitions. Every year, the hike with 10% would be Rs.13.5. We, therefore, deem it appropriate to add Rs.100/- by way of escalation and arrive at the market value of Rs.235/- per sq. meter. There is no dispute that the Award at Exh. A-3 has reached its finality and, therefore, it could be the best comparable instance to determine the market value of the subject land as well.

4. On the point of standard deductions, we must note that the claimants land admeasuring 10,028 sq. meters from four different Chalta Nos. i.e. 62/46, 74/25, 74/80 and 74/64 has been utilized for construction of the Sports Complex/Stadium for which the open space reservations etc. as per the Municipal Regulations could not be applicable. The entire land has been utilized for the Sports Complex which is named as "Jawaharlal Nehru Stadium". Under the circumstances, the market value of Rs.235/- per sq. meter would be payable for the entire land acquired i.e. 10,028 sq. meters.

5. It has been brought to our notice that for some time, there was a dispute regarding the joint share holding in respect of a part of the land admeasuring 5305 sq. metres and the said dispute has been settled. Mr. M. B. Da Costa, the learned Senior Counsel undertakes to submit a copy of the said compromise to the Registry of this Court within one week.

6. In the result, we allow this appeal partly and fix the market value of the subject land at Rs.235/- per sq. meter as on 20th April, 1988. Undoubtedly, the claimants will be entitled for other statutory benefits i.e. solatium and interest under Sections 23A and 28 of the Act respectively. The impugned Award is accordingly modified and the Registry shall issue a fresh decree. The Cross Objection by the claimants is also answered by the above Order of fixing the market value at Rs.235/- per sq. meter for the entire land

admeasuring 10,028 sq. meters and the distribution of the respective shares shall be as per the compromise to be submitted to the Registry, by the claimants.

7. The State Government may apply for the refund of the balance amount, if any. Costs in cause.

B. H. MARLAPALLE, J.

N. A. BRITTO, J.

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